

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-210013

DATE: May 10, 1983

MATTER OF: Interad, Ltd.

DIGEST:

1. Where "equal" item does not conform to salient characteristics of brand name product, bid must be rejected as nonresponsive.
2. Overall determination of technical adequacy of bids is primarily a function of the procuring agency. Therefore, contracting officer has reasonable amount of discretion in evaluation of bids. Moreover, judgment of procuring agency's technicians and specialists as to the technical adequacy of bids or proposals submitted in response to agency's statement of its needs will generally be accepted by our Office. Our Office will only question such determinations where there is a clear showing of unreasonableness, arbitrariness, abuse of discretion or violation of procurement statute or regulation.
3. Where bidder failed to list salient characteristic in brand name or equal procurement, procuring agency may not seek clarification from bidder, after bid opening, as to why salient characteristic was not included in bid since this would permit bidder to make its nonresponsive bid responsive after bid opening and would be tantamount to permitting bidder to submit new bid.

Invitation for bids No. DAAK21-82-B-9830 was issued by the United States Army, Harry Diamond Laboratories, Adelphi, Maryland, for the procurement of six VHF/UHF receivers with an option for an additional six receivers. The invitation provided that the required receivers were to be Applied Communications (Applied) Model SR-2154 with option 03 or "equal" and that "equal" items

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had to meet the salient characteristics listed in the invitation. Interad, Ltd. (Interad), protests the rejection of its "equal" for not complying with a listed salient characteristic.

We find no merit in this protest.

When bids were opened, Interad was the apparent low bidder, while Applied was second low. The bids were submitted to the Army's Signals Warfare Laboratory (SWL) for technical evaluation of the descriptive literature provided with the bids. The results of the evaluation recommended that the bid submitted by Interad be rejected as nonresponsive and that award be made to Applied because of the failure of Interad's descriptive literature to show that the product offered conformed to the salient characteristics required by the invitation. Specifically, Interad's descriptive literature did not address the salient characteristic for the Local Oscillator (LO) radiation at RF input which has a performance specification of -95 dbm, maximum. Also, following a protest by Applied, it was determined that Interad had failed to address the required salient characteristic of Rear Panel Audio Output of 10MW into 600 ohms, minimum. Subsequently, the contract was awarded to Applied.

Interad protested to our Office, giving as a basis for its protest its belief that the equipment it offered did comply fully with the salient characteristics of the invitation.

According to the contracting officer, at a debriefing following the Interad protest, Interad stated that the omission of the salient characteristic for which it had been declared nonresponsive (LO radiation) was the result of a clerical error, which should have been obvious to the Government since all of the other required salient characteristics were present in the bid. Further, Interad argued that the Government erred by not going back to Interad for clarification of why the salient characteristic was not included in the bid because the omission of the salient characteristic was a minor error and the Government should have been able to discern from the descriptive literature that the product offered did, in fact, meet all of the specification requirements.

The invitation provides that bids submitted offering an "equal" product must provide descriptive literature to show

that the product offered conforms to all of the specifications and requirements of the solicitation and that the failure of descriptive literature to show full compliance with the solicitation will require rejection of the bid. According to the SWL technical evaluators, the descriptive literature accompanying Interad's bid did not show full compliance with the solicitation requirements since the descriptive literature did not address one salient characteristic (actually, as mentioned above, Interad's bid failed to address two salient characteristics). In this regard, the contracting officer states that all of the salient characteristics listed in the IFB were considered important and necessary to meet the Government's minimum requirements. Since Interad's bid failed to address two salient characteristics, the procuring activity had no way of knowing whether or not the bid conformed to the salient characteristics of the brand name product. Therefore, rejection of Interad's bid as nonresponsive was proper since we have held that where the equal item bid does not show conformance to the salient characteristics of the brand name product, the bid must be rejected as nonresponsive. See Save-On Wholesale Products, B-194510, July 5, 1979, 79-2 CPD 9, and Ohio Medical Products, B-192317, October 23, 1978, 78-2 CPD 295.

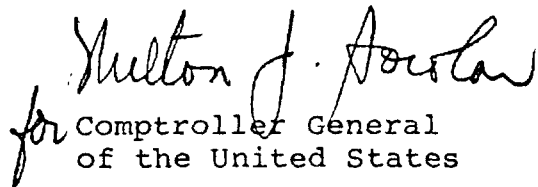
As evidenced by Interad's views expressed at the debriefing, Interad disputes the conclusion reached by the technical evaluators. However, Interad has presented no evidence, other than its bare allegation, sufficient to overcome the technical evaluators' conclusions. It is Interad's responsibility to affirmatively demonstrate the acceptability of its product, which it failed to do. See Vempco Corporation, B-187318, February 15, 1977, 77-1 CPD 113.

Moreover, we have held that the overall determination of the technical adequacy of bids is primarily a function of the procuring agency. Therefore, the contracting officer has a reasonable amount of discretion in the evaluation of bids. Harding Pollution Controls Corporation, B-182899, July 3, 1975, 75-2 CPD 17. The judgment of the technicians and specialists of the procuring agency as to the technical adequacy of bids or proposals submitted in response to the agency's statement of its needs will generally be accepted by our Office. Metis Corporation, 54 Comp. Gen. 612 (1975), 75-1 CPD 44. Such determinations will be questioned by our

Office only upon a clear showing of unreasonableness, an arbitrary abuse of discretion or a violation of the procurement statutes and regulations. Marine Electric Railway Products Co., Inc., B-189929, March 9, 1978, 78-1 CPD 187. There was no such showing in the present case.

Finally, concerning the allegation by Interad that the Government erred by not going back to Interad for clarification, we have held that to permit a bidder to make its non-responsive bid responsive after bid opening, which the contracting officer would be doing had he sought clarification from Interad after bid opening, would be tantamount to permitting the bidder to submit a new bid and may not be permitted. See Recording Consultants Inc., B-201629, May 6, 1981, 81-1 CPD 355, and Casecraft, Inc., B-201065, July 20, 1981, 81-2 CPD 51.

The protest is denied.


for Comptroller General
of the United States